

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

18-CR-6091

vs.

ROBERT E. TILLARD,
Defendant.

Rochester, New York
August 5, 2019
10:13 a.m.

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SUPPRESSION HEARING - VOLUME II

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JONATHAN W. FELDMAN
UNITED STATES MAGISTRATE JUDGE

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US v. Tillard - 18-CR-6091

PROCEEDINGS

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4 (WHEREUPON, the defendant is present.)

10:13AM 5 **THE CLERK:** United States versus Robert Tillard
6 case number 18-CR-6091.

7 MAGISTRATE JUDGE FELDMAN: Good morning, everyone.

10:13AM 10 MS. ZOGHLIN: Yes.

11 MS. HARTFORD: Yes, your Honor.

14 **MS. HARTFORD:** We have the continuation of Peter
15 officer Peter Minurka and then after that, there will be one
16 witness, Officer Sam Giancursio.

19 MS. HARTFORD: Yes. He plans to be here at 10:30.

10:13AM 20 **MAGISTRATE JUDGE FELDMAN:** All set?

21 MS. ZOGHLIN: Yes.

22 **MAGISTRATE JUDGE FELDMAN:** You may continue.

23 **MS. ZOGHLIN:** So if you recall, Judge, it's a
24 little odd. We're starting with my cross.

10:13AM 25 **MAGISTRATE JUDGE FELDMAN:** Right.

Minurka - Cross - Zoglin

10:13AM 1 **MS. ZOGHLIN:** So, I can say as you recall from
2 direct in December.

3 **MS. HARTFORD:** And, your Honor, I will state
4 that -- well, never mind. Nothing. Let's go ahead.

10:13AM 5 **MAGISTRATE JUDGE FELDMAN:** I think we were last in
6 court on December 12th. That's when the direct examination.
7 So why don't we have the witness take the stand.

8 Officer Minurka, I know it's been about eight
9 months since you were here so I'm going to have you sworn in
10 again, okay.

11 **THE WITNESS:** Yes, sir.

12

13 PETER MINURKA, having been called as a witness,
14 being duly sworn, testifies as follows:

10:13AM 15 **MAGISTRATE JUDGE FELDMAN:** All right. We're
16 continuing the examination of Officer Minurka. When we were
17 last in session, the government had completed its direct
18 examination so we're ready for cross-examination.

19 **MS. ZOGHLIN:** Thank you, Judge.

10:14AM 20 **CROSS-EXAMINATION BY MS. ZOGHLIN:**

21 Q Good morning, officer.

22 A Good morning, ma'am.

23 Q One of the things that you testified about
24 back in December was your previous contacts with Mr. Tillard,
25 you remember that?

Minurka - Cross - Zoglin

10:14AM 1 A Yes.

2 Q And would it be fair to say that you, he was

3 fairly well known to you before February 25th, 2017, when you

4 arrested him?

10:14AM 5 A Yes.

6 Q Is that right?

7 A Yes, ma'am.

8 Q You had many contacts with him before; is that

9 right?

10:14AM 10 A Yes.

11 Q Obviously you knew him, right?

12 A Correct.

13 Q In fact, between October and the date you

14 arrested him, you had stopped him six different times for

10:14AM 15 traffic infractions, is that right?

16 A I don't remember the exact time but that

17 sounds about right.

18 Q You, you testified before the -- was it the

19 Professional Standards Section, is that what PSS stands for?

10:15AM 20 A Yes, ma'am.

21 Q And they asked you about that, as well, is

22 that right?

23 A They did.

24 Q And you told them that you had stopped him --

10:15AM 25 hang on one second -- on October 3rd, 2016, for a traffic

Minurka - Cross - Zoglin

10:15AM 1 stop; is that right?

2 A Honestly, I don't recall.

3 Q Okay. If you looked at your testimony from

4 your Professional Standards Section hearing, would that

10:16AM 5 refresh your recollection?

6 A Yes.

7 Q Okay. So, showing you what's there at the

8 bottom of the page, can you just read that to yourself?

9 A Yes. (Reviewing document.)

10 Q Did you stop him on October 3rd, 2016?

11 A I did.

12 Q And that was a traffic stop, is that right?

13 A Yes.

14 Q And did you make any arrests at that time?

10:16AM 15 A I do not believe so.

16 Q Did you or anyone else issue any traffic

17 citations during that stop?

18 A Not to my knowledge.

19 Q Next on November 2nd, 2016, you were engaged

10:16AM 20 in another traffic stop with Mr. Tillard; is that right?

21 A Again, I don't recall the dates but if I

22 testified at that thing, yes.

23 Q Did you at that point arrest him for anything?

24 A I do not believe so.

10:17AM 25 Q Did you issue him any traffic citations?

Minurka - Cross - Zoglin

10:17AM 1 A Not to my knowledge, nobody did.

10:17AM 2 Q Again, one week later, November 9th, 2016, did

3 you make a traffic stop of Mr. Tillard?

10:17AM 4 A Again, I could not recollect, given the

5 timeframe, but if it was on the PSS, then yes.

10:17AM 6 Q And did you issue -- did you arrest him at

7 that point?

10:17AM 8 A No.

10:17AM 9 Q Did you issue any traffic citations at that

10 point?

10:17AM 11 A Not to my knowledge.

10:17AM 12 Q Then again two weeks later on November 25th,

13 2016, there was another traffic stop, is that right?

10:17AM 14 A Yes.

10:17AM 15 Q And you stopped Mr. Tillard, right?

10:17AM 16 A Yes.

10:17AM 17 Q And did you arrest him for anything?

10:17AM 18 A No.

10:17AM 19 Q Did you issue any citations for anything?

10:18AM 20 A Not to my knowledge.

10:18AM 21 Q On December 19th, 2016, same thing, a traffic

22 stop of Mr. Tillard, right?

10:18AM 23 A Yes.

10:18AM 24 Q And did you issue any citations on that day?

10:18AM 25 A I do not believe so.

Minurka - Cross - Zoglin

10:18AM 1 Q Did you arrest him for anything?

2 A No.

3 Q The day before this incident happened

4 February 24th, 2017, again you stopped Mr. Tillard in a

10:18AM 5 traffic stop, is that right?

6 A Yes.

7 Q And did you issue him any citations?

8 A No.

9 Q Did you arrest him for anything?

10 A No.

11 Q Did you on any of these six occasions search

12 him or his vehicle?

13 A I'm not sure exactly which ones but there has

14 been occasion, yes.

10:18AM 15 Q And did you ever find any contraband when you

16 searched him?

17 A I do believe a couple occasions, yes.

18 Q And that would include marijuana?

19 A Yes.

10:18AM 20 Q And on one occasion did you find marijuana and

21 a scale?

22 A I do not recall.

23 Q In any of these occasions, do you recall

24 finding an amount of marijuana that would suggest to you that

10:19AM 25 he was selling marijuana?

Minurka - Cross - Zoglin

10:19AM 1 A Again, I don't recall the quantity.

2 Q You say you do recall finding marijuana, is

3 that right?

4 A I have, yes.

10:19AM 5 Q And on any of those occasions did you charge

6 him for anything for possessing that marijuana?

7 A No.

8 Q Obviously it was a crime, right?

9 A Yes.

10:19AM 10 Q Or an infraction at least?

11 A Correct.

12 Q Just showing you again your testimony from the

13 Professional Standards Section regarding your stop on

14 October 3rd, 2016, could you just read this and then what's

10:20AM 15 highlighted on the next page.

16 A Yes.

17 **MS. HARTFORD:** I'm sorry, what page is that?

18 **MS. ZOGHLIN:** Sure. It's Page 3 and 4.

19 A (Reviewing document.)

10:20AM 20 Q Does that refresh your recollection?

21 A Yes.

22 Q And on that date, October 3rd, 2016, did you

23 locate marijuana and a scale?

24 A I did.

10:21AM 25 Q In Mr. Tillard's car?

Minurka - Cross - Zoglin

10:21AM 1 A Yes.

2 Q And was it an amount of marijuana that

3 suggested to you that he was engaged in selling marijuana?

4 A I do not recall. If you have the property

10:21AM 5 custody report, I can see the quantity.

6 Q Would you suggest a scale is indicative of

7 selling?

8 A Yes.

9 Q Or at least it could be, right?

10 A It could be.

11 Q And you didn't charge him with anything then?

12 A No.

13 Q Okay. Now, you also reached out to

14 Mr. Tillard by text message, right?

10:21AM 15 A I believe on numerous occasions, yes.

16 Q And specifically on two occasions,

17 November 2nd and November 4th, 2016; is that right?

18 A I don't know exact dates but.

19 Q If I showed you the text messages, would that

10:22AM 20 refresh your recollection?

21 A Yes. (Reviewing document.)

22 Q It would be fair to say that you texted

23 Mr. Tillard on November 2nd and November 4th, 2016; is that

24 right?

10:22AM 25 A Yes.

Minurka - Cross - Zoglin

10:22AM 1 Q And the texts were from your personal cell
2 phone, right?

3 A Yes.

10:22AM 4 Q You also have at least the option of having a
5 separate cell phone that might be referred to as a snitch
6 phone, right?

7 A I personally don't.

8 Q You could have that if you wanted to, right?

9 A I suppose I could if I had to pay for it, yes.

10:22AM 10 Q Do you know other people that have a snitch
11 phone, other police officers?

12 **MS. HARTFORD:** Objection. Relevance.

13 **MAGISTRATE JUDGE FELDMAN:** Overruled.

14 **MS. HARTFORD:** Okay.

10:22AM 15 A Not anybody that immediately could testify
16 that they do have one, no.

17 Q When you texted -- you said before that you
18 sent those texts to Mr. Tillard on November 2nd and
19 November 4th, right?

10:23AM 20 A Yes.

21 Q Did you text him on any other occasions?

22 A Not that I can recall.

23 Q And would it be fair to say that he didn't
24 respond to you on either of those occasions?

10:23AM 25 A On those text messages, yes.

Minurka - Cross - Zoglin

10:23AM 1 Q Let me make sure I just --

2 A Yes.

3 Q -- say it better. It would be accurate to say

4 that he did not respond?

10:23AM 5 A On this occasion, no, he did not.

6 Q On November 2nd or November 4th?

7 A On both occasions he did not.

8 Q And did he ever respond on any other occasion?

9 A I think he has, yes.

10:23AM 10 Q Would you have any text message or any

11 documentation anywhere that would show when or if he texted

12 you back?

13 A I do not.

14 Q Now, this arrest -- I just want to bring up to

10:24AM 15 the date of this arrest which would be February 25th, 2017,

16 right?

17 A Yes.

18 Q And you indicated that you had stopped

19 Mr. Tillard just the day before, right?

10:24AM 20 A Yes.

21 Q Were you driving the same vehicle the day

22 before when you stopped him?

23 A I do not recall.

24 Q Now, on this day you were with Officer

10:24AM 25 Giancursio?

Minurka - Cross - Zoglin

10:24AM 1 A Yes.

2 Q And you were in -- it wasn't a marked police

3 car, right?

4 A No.

10:24AM 5 Q On the other hand, if you looked very closely,

6 you would know it was a police car, right?

7 A Yes.

8 Q Because it was a white Chevy Impala, right?

9 A Correct.

10:24AM 10 Q It had a spotlight on it?

11 A I don't think there was a spotlight but there

12 is a light bar, yes.

13 Q A light bar on the front fender?

14 A Yes.

10:25AM 15 Q And it had a cage in the back, correct?

16 A Correct.

17 Q And by cage I mean a screen between the front

18 seat and the back seat that would secure a prisoner, right?

19 A Correct.

10:25AM 20 Q You testified that you first saw Mr. Tillard

21 when you passed each other on -- is it Doran Street, is that

22 right?

23 A I was on Doran Street, yes.

24 Q And there came a time you were going one

10:25AM 25 direction and he was going the other and you passed each

10:25AM 1 other, correct?

2 A Correct.

3 Q And were you the driver?

4 A I was.

10:25AM 5 Q So, as you're passing him, you and he are

6 closest to each other?

7 A Correct.

8 Q Or is he -- okay. And you recognized him,

9 right?

10:25AM 10 A Yes.

11 Q Did it appear to you that he looked at you,

12 too?

13 A Yes.

14 Q And right next -- a few feet apart, correct?

10:25AM 15 A Correct.

16 Q There was also somebody in the passenger seat,

17 right?

18 A I wasn't able to identify the passenger until

19 after the incident. I didn't see the passenger at the time.

10:26AM 20 Q But it turns out there was someone in the

21 passenger seat --

22 A There was, correct.

23 Q -- right? And that was Sherry Kitchens that

24 was in the passenger seat?

10:26AM 25 A Yes.

10:26AM 1 Q Do you know at the time whether Ms. Kitchens
2 had a valid license?

3 A I do not know.

4 Q At that point you kind of drove around the
10:26AM 5 block and then started following Mr. Tillard; is that right?

6 A Yes.

7 Q And about how far behind -- was this on
8 Exchange Street that you were following?

9 A Yes, this is when I was able to reacquire the
10:26AM 10 vehicle.

11 Q And by reacquire the vehicle, you mean you saw
12 it again?

13 A Yes.

14 Q And as you were following him on Exchange
10:26AM 15 Street, about how far was your car from his?

16 A Within two car lengths about.

17 Q And as he was driving, I think you testified
18 that as he approached Flint Street, it appeared that he was
19 going to turn right, is that accurate?

20 A Yes.

21 Q And then he put on his turn signal, his left
22 turn signal, right?

23 A Yes.

24 Q And then he turned left?

10:27AM 25 A Yes.

10:27AM 1 Q And then you turned left behind him; is that
2 right?
3 A Yes.
4 Q Would you say you were still about two car
10:27AM 5 lengths behind him?
6 A I was two car lengths about, trying to catch
7 up to him, yes.
8 Q At some point he pulled over to the right?
9 A Yes.
10 Q And Flint Street is a fairly short street that
11 dead-ends basically into the river?
12 A Yes.
13 Q And he pulled up in front of -- on the right
14 which is a very -- a wooded section, correct?
10:27AM 15 A It was like a briar patch.
16 Q And there's -- obviously there's trees back
17 there, right?
18 A Yes.
19 Q There's a lot of bushes?
10:27AM 20 A Yes.
21 Q And there's a structure like a hut or
22 something?
23 A Yes.
24 Q And people throw a lot of junk back there,
10:28AM 25 right?

10:28AM 1 A I haven't been over there enough to say
2 there's junk back there but there's --
3 Q There --
4 A -- a briar patch and a shed, yes.
10:28AM 5 Q And next to the shed, there's a bunch of old
6 tires?
7 A Not that I could recall that day.
8 Q When Mr. Mr. Tillard -- Mr. Tillard got out of
9 his car after he pulled up next to that wooded section,
10:28AM 10 right?
11 A Yes.
12 Q And he ran into the woods?
13 A Yes.
14 Q At that point did you pull up behind him?
10:28AM 15 A I slowed and that's when Officer Giancursio
16 exited the vehicle, the patrol car and I continued to
17 actually drive eastbound on Flint Street.
18 Q When you say eastbound, is that in the same
19 direction that you were going, towards the river?
10:28AM 20 A Yes.
21 Q So Officer Giancursio got out and went after
22 Mr. Tillard, is that right?
23 A Yes.
24 Q And you kept driving?
10:28AM 25 A Yes.

Minurka - Cross - Zoglin

10:28AM 1 Q At that point Mr. Tillard was not in your
2 sight, correct?
3 A Correct.
4 Q You then pull over at some point and you got
10:28AM 5 out, right?
6 A Yes.
7 Q And about how long between the point at which
8 Officer Giancursio got out and you got out?
9 A Within seconds.
10 Q And when you got out, you also ran into the
11 wooded area --
12 A Yes.
13 Q -- is that right? And would it be fair to say
14 that it is not well lit in that area?
10:29AM 15 A Correct.
16 Q You -- which direction did you run when you
17 got out of the car?
18 A I guess it would be like a, like south,
19 southwest direction because I kind of cut through diagonally
10:29AM 20 through the briar patch.
21 Q And at some point you saw Mr. Tillard again?
22 A Yes.
23 Q Okay. And how long after you started running
24 did you see him?
10:29AM 25 A Within seconds. I was able to illuminate him

10:29AM 1 with my flashlight.

2 Q You were holding a flashlight?

3 A Yes, ma'am.

4 Q So when you saw him, was he still running?

10:29AM 5 A He was.

6 Q And could you also see Officer Giancursio?

7 A Yes.

8 Q And could you explain where he was in

9 relationship to you and Mr. Tillard?

10:30AM 10 A Approximately 5 feet behind Mr. Tillard.

11 Q And where were you in relationship to them?

12 A Probably 10, 15 yards.

13 Q Okay. And was that behind Officer Giancursio,

14 in front of Officer Giancursio --

10:30AM 15 A It was --

16 Q -- or to the side?

17 A More so at like an angle. So I had the side

18 profile of Mr. Tillard and Officer Giancursio.

19 Q So as you were, you were -- did you say 15 to

10:30AM 20 yards?

21 A If I can recall correctly, yes.

22 Q And Officer Giancursio was about 5 feet behind

23 him?

24 A Yes.

10:30AM 25 Q At that point you testified on direct that you

10:30AM 1 saw something, is that right?

2 A Yes.

3 Q Now, at this point you said you saw

4 Mr. Tillard's profile, correct?

10:30AM 5 A Yes.

6 Q So, what side of him were you looking at?

7 A I was looking at his left side.

8 Q So as you were looking at his left side, what

9 did you see?

10:31AM 10 A I could see him reach across towards -- like

11 with his right arm and make a throwing motion across his body

12 towards his right.

13 Q So you're looking at his left side?

14 A Correct.

10:31AM 15 Q You see him use his right arm?

16 A Yes.

17 Q And what does he do with it exactly?

18 A He brings it across his body and kind of makes

19 a throwing motion (indicating).

10:31AM 20 Q Could you see the front of his body at that

21 time?

22 A It was like partially --

23 Q Could you see him take any object?

24 A It was too dark to actually see what was in

10:31AM 25 his hand at the time.

Minurka - Cross - Zoglin

10:31AM 1 Q So you never saw anything in his hand?

2 A Correct.

3 Q You saw what you described as a throwing

4 motion, is that right?

10:31AM 5 A Yes.

6 Q Did you -- after you saw the throwing motion,

7 did you hear anything?

8 A I think I was too far away, ma'am, no.

9 Q Did you see anything in the air?

10:31AM 10 A No.

11 Q And about how long did that happen after you

12 started chasing him?

13 A Within seconds.

14 Q And how long between the time you started

10:32AM 15 chasing him to the time that -- well, let me back up.

16 At some point he was taken into custody,

17 right?

18 A Yes.

19 Q So at some point he was on the ground?

10:32AM 20 A Yes.

21 Q Did you see how he got to the ground?

22 A I believe I was ordering him to get to the

23 ground. I believe Officer Giancursio was, I think he

24 actually got to the ground at our request.

10:32AM 25 Q So based on your direction or Officer

10:32AM 1 Giancursio's --

2 A Yes.

3 Q -- direction, he got to the ground?

4 A Yes.

10:32AM 5 Q And at that point Officer Giancursio was

6 closer to him, right?

7 A Yes.

8 Q Were you still about 15, 20 yards away?

9 A At that point I pretty much cleared the

10:32AM 10 distance so I was right next to him as well.

11 Q And you saw Officer Giancursio basically take

12 him into custody --

13 A Yes.

14 Q -- is that right?

10:32AM 15 A Yes.

16 Q And did you hear Officer Giancursio say

17 anything to him?

18 A No, other than his verbal commands of him

19 getting on the ground.

10:33AM 20 Q And was he handcuffed?

21 A Yes at, at, at -- I'm not sure if it was on

22 the ground or if he was on his feet when he was handcuffed

23 but yes, gently.

24 Q Is it more likely that he was handcuffed

10:33AM 25 before he was brought to his feet?

Minurka - Cross - Zoglin

10:33AM 1 A Yes.

2 Q And was he searched?

3 A There did come a time when he was searched by

4 Officer Giancursio.

10:33AM 5 Q Did you hear Mr. Tillard say anything?

6 A I did.

7 Q And at what point did you hear him say

8 something?

9 A I believe it was when Officer Giancursio was

10 walking him back like crossing me back to the patrol car.

11 Q So they were walking together toward the

12 patrol car?

13 A Yes.

14 Q And were you walking with them?

10:33AM 15 A I stayed in that immediate area for a brief

16 time and then to go back to the passenger -- or the vehicle.

17 Q How far away from you were they when you heard

18 Mr. Tillard say something?

19 A Probably within arm's length.

10:33AM 20 Q But they were already walking?

21 A Yes.

22 Q Is that your testimony -- could you tell us

23 exactly what he said?

24 A In sum and substance, he said, I ran because I

10:33AM 25 had weed on me.

Minurka - Cross - Zoglin

10:34AM 1 Q He was issued, Mr. Tillard was issued some --
2 a couple citations from this incident, right?
3 A Yes.
4 Q And one was not signaling within a hundred
10:34AM 5 feet of the turn, right?
6 A Correct.
7 Q And one was unlicensed driver?
8 A Yes.
9 Q Was he issued a citation for speeding?
10:34AM 10 A No.
11 Q Was he issued a citation for reckless driving?
12 A No.
13 Q When you say that you saw Mr. Tillard reach
14 over his, is it -- let me make sure I got it right. He used
10:34AM 15 his right hand and he reached to where?
16 A Kind of reached across like the front of his
17 body and then made a throwing motion.
18 Q You didn't see him take -- you didn't see him
19 take anything out of his waist band?
20 A No, I did not.
21 Q At that point did you have a flashlight?
22 A I did.
23 Q Now at 15 to 20 yards was your flashlight
24 illuminating Mr. Tillard?
25 A It was.

10:35AM 1 Q And was Officer Giancursio's flashlight
2 illuminating him?

3 A Yes.

4 Q And Officer Giancursio was running at the
10:35AM 5 time, right?

6 A Yes.

7 Q And you were running at the time, right?

8 A Yes.

9 Q And you were both, I assume, wearing -- were
10:35AM 10 you in uniform?

11 A I was.

12 Q And were you wearing called a duty belt?

13 A Yes.

14 Q So you were wearing your belt with the gun and
10:35AM 15 whatever else on it, right?

16 A Yes.

17 Q At some point after he's taken into custody by
18 Officer Giancursio, you take custody of Mr. Tillard; is that
19 right?

20 A Yes.

21 Q And after he was taken into custody -- well,
22 back when he was taken into custody by Officer Giancursio did
23 you have any conversation with Officer Giancursio about
24 whether he had thrown something?

25 A Not that I can recall.

Minurka - Cross - Zoglin

10:36AM 1 Q So neither of you said anything about that?

2 A Not that I can recall, no.

3 Q Did you tell Officer Giancursio. I saw him

4 make a throwing motion with his right arm?

10:36AM 5 A Not that I can recall.

6 Q Did you -- so you don't recall ever saying, I

7 saw him throw and something in that direction?

8 A I don't recall even having the opportunity to

9 have a conversation with Officer Giancursio, given the

10:36AM 10 circumstances.

11 Q Did you go look for to see what he had thrown?

12 A There did come a time, yes, I did.

13 Q And did you find anything?

14 A Yes.

10:36AM 15 Q Okay. Was it you that you found something

16 first?

17 A It was Officer Giancursio that found it first.

18 Q Okay. So, when you say you went looking for

19 it, had Officer Giancursio already found it?

10:37AM 20 A I believe it was almost within seconds of me

21 arriving that he had found it.

22 Q Within seconds of you arriving?

23 A Arriving to that area.

24 Q By that point Mr. Tillard was in someone

10:37AM 25 else's custody; is that right?

10:37AM 1 A Yes.

10:37AM 2 Q So how long between the time that he was taken
3 into custody on the ground until the time that you saw the
4 gun?

10:37AM 5 A I'm not sure the timeframe.

10:37AM 6 Q Would you say it's closer to five minutes or
7 closer to half an hour?

10:37AM 8 A I would say it would be less than a half an
9 hour.

10:37AM 10 Q Had you done any searching yourself?

10:37AM 11 A (No response.)

10:37AM 12 Q For the gun?

10:37AM 13 A When I arrived there with Officer Giancursio,
14 is that what you're saying? I'm sorry.

10:37AM 15 Q Let me clarify. Are you both looking for it
16 at the same time?

10:37AM 17 A No. He was able to look for it before I was.
18 I was doing other duties.

10:37AM 19 Q Okay. So, he already had found it when you
20 got to him?

10:37AM 21 A As I approached through the briar patch, I
22 believe he basically alerted me and I came over there and we
23 located --

10:38AM 24 Q And how far from where Mr. Tillard was on the
25 ground did you find that gun?

Minurka - Cross - Zoglin

10:38AM 1 A It was within 8 to 10 feet from where he was.
2 Q And where was it in relationship to him or you
3 and Officer Giancursio, in what direction?
4 A It was to -- it would been to his right side
10:38AM 5 so a little bit further westbound.
6 Q After you made that observation, you said
7 there came a time when you and Mr. Tillard were together
8 again, right?
9 A Yes.
10 Q And that was in your police car?
11 A Yes.
12 Q And he was handcuffed, correct?
13 A Yes.
14 Q And he was in the back like the cage in your
10:38AM 15 police car, correct?
16 A Yes.
17 Q And you were in the front of the car, right?
18 A Yes.
19 Q At that point, you testified earlier, you had
10:38AM 20 a conversation with him, right?
21 A Yes.
22 Q Now, would it be fair to say that it's common
23 to take someone back to the public safety building to
24 interview them?
10:39AM 25 A Yes.

10:39AM 1 Q And at the public safety building there are
2 specific rooms designed for those interviews, right?
3 A Yes.
4 Q And there's specifically there's a room with a
10:39AM 5 table and chairs, a small interrogation room basically,
6 interview room?
7 A Yes.
8 Q And you can lock the door behind you, right?
9 A Yes.
10 Q And you can unhandcuff a prisoner in that
11 room, right?
12 A Yes.
13 Q And obviously there's a table to write on?
14 A Yes.
15 Q You chose not to do that, correct?
16 A Correct.
17 Q And instead you interviewed Mr. Tillard for
18 about 45 minutes in your car, is that right?
19 A Yes.
10:39AM 20 Q And during that time did you record that
21 interview in any way?
22 A No.
23 Q At the public safety building there are
24 facilities, there is equipment that can be used to record
10:39AM 25 people's interviews --

Minurka - Cross - Zoglin

10:39AM 1 A Yes.

2 Q -- right? So as you're talking to him for 45

3 minutes, did you have your body cam on you at the time or was

4 it in the car?

10:40AM 5 A It was in the car.

6 Q So it was obviously within arm's reach of

7 where you were --

8 A Yes.

9 Q -- correct? And at that point it didn't occur

10:40AM 10 to you to record the statement?

11 A I did not record it because it's not the

12 policy. So, at that point there was actually body worn

13 camera policies and I know with our department we're actually

14 not required to interview -- or sorry, to record an interview

10:40AM 15 based on a mere possession of a firearm.

16 Q So, was there a policy that said that you

17 couldn't record the interview?

18 A There was no policy whatsoever, ma'am.

19 Q So, in other words, you had a recording device

10:40AM 20 with you, right?

21 A Yes.

22 Q You chose not to record the interview, is that

23 accurate?

24 A To be in compliance with the department, I

10:41AM 25 chose not to, correct.

10:41AM 1 Q Well, let's go back. You just said, I think,
2 that there is no policy?

10:41AM 3 A I know --

10:41AM 4 Q Hang on. There is no policy that prohibits
5 you from recording an interview; is that right?

10:41AM 6 A Correct.

10:41AM 7 Q So, you could have, if you chose, recorded the
8 interview with your body camera?

10:41AM 9 A At that, at that time if I did, I was not -- I
10 did not know if I would be in violation of any policy because
11 there was --

10:41AM 12 Q So --

10:41AM 13 A -- there was nothing written that would
14 demonstrate that I could record with body worn camera.

10:41AM 15 Q There were General Orders about use of a body
16 cam, right?

10:41AM 17 A They were not complete but yes.

10:41AM 18 Q Well, they were issued in June of the year
19 before, right, June of 2016?

10:41AM 20 A I'm not sure the exact date.

10:41AM 21 Q When were you issued the body camera?

10:41AM 22 A I believe it was in January of 2017.

10:41AM 23 Q Do you know, was it the beginning January?

10:41AM 24 A I do not know.

10:42AM 25 Q At the time you were issued the body camera,

10:42AM 1 is it fair to say that you were told to familiarize yourself
2 with the General Orders?

3 A Yes.

4 Q And did you familiarize yourself with the
10:42AM 5 General Orders?

6 A To the best of my ability, yes.

7 Q And there's certainly nothing in the General
8 Orders that say that you're not supposed to record an
9 interview with your body cam, right?

10:42AM 10 A Not at the time, not, not that I can recall.

11 Q And not now, right?

12 A Now there actually is a policy.

13 Q What is the policy now?

14 A I believe you are to record if you can.

10:42AM 15 Q The body camera General Orders that you
16 familiarized yourself also laid out when you're supposed to
17 use your body camera, is that right?

18 A Yes.

19 Q And, essentially, you're supposed to use it
10:42AM 20 every time you have an interaction with somebody that could
21 be the subject of an arrest; is that right?

22 A Yes.

23 Q Every traffic stop, correct?

24 A Yes.

10:43AM 25 Q So when you stop a car, before you even get

10:43AM 1 out of the vehicle you're supposed to turn it on, right?

2 A Yes.

3 Q And if you get a call over the radio before

4 you even start following somebody, you turn it on, right?

10:43AM 5 A No.

6 Q You don't turn it on when you get a call?

7 A No.

8 Q So you wouldn't turn it on if you were on the

9 way to a location?

10:43AM 10 A No.

11 Q And how about if you're -- if you're pursuing

12 someone you radio in that you're doing that, right?

13 A Yes.

14 Q And did you do that in this case?

10:43AM 15 A Officer Giancursio did.

16 Q No question that as soon as you got out of the

17 car, you were supposed to turn it on, right?

18 A Yes.

19 Q And after the professional standards

10:44AM 20 investigation, you were issued a reprimand for not using your

21 body camera, is that right?

22 A No.

23 Q That's not correct?

24 A No.

10:44AM 25 Q What happened?

10:44AM 1 A I was given a training. It was basically a,
2 like a training video, recommendation from the department.
3 Q Can you explain what this is?
4 A Yes, it's not disciplinary in any fashion.
10:44AM 5 It's actually identified extra training.
6 Q So, you were warned that if you didn't, if
7 this same conduct -- it was clear that they found this to be
8 an infraction of the rules, correct?
9 A It is not an infraction.
10:44AM 10 Q It is -- okay, so maybe we're getting our
11 words wrong.
12 A Yes.
13 Q They told you you did something wrong, is that
14 fair to say?
10:44AM 15 A I think that would be fair to say, yes.
16 Q You violated the General Orders with regard to
17 the use of your body camera?
18 A Yes.
19 Q And they told you that if that continued, you
20 would then be subject to disciplinary action, correct?
21 A They did not tell me that but I would assume
22 that that's what would happen.
23 Q Well, they issued a memo to you about,
24 about -- a counseling memorandum about the policy, right?
10:45AM 25 A Yes.

Minurka - Cross - Zoglin

10:45AM 1 Q And in the counseling memorandum it says
2 you're advised that this conduct or further similar conduct
3 on your part may result in disciplinary action?

10:45AM 4 A I would like to note that I never actually
5 seen that paper before because they're not -- technically
6 they don't have to serve that to me and give that to me in
7 hand and have to sign it. So I've never actually seen that
8 before.

10:45AM 9 Q So you've never seen the memo that says: To
10 Officer Peter Minurka from Sergeant Joseph Perrone
11 (phonetic)?

12 A I don't believe. I don't believe -- oh, it
13 might be if it's this one or not. I'm not sure if it's the
14 same one or not. Can I see.

10:45AM 15 Q I show you what's re -- if I refresh your
16 recollection whether you have seen that?

17 A Yes, this one I've seen.

18 Q Have you seen that?

19 A Yes.

10:46AM 20 Q Okay. And this specifically says that if that
21 further conduct -- conduct or further similar conduct on your
22 part may result in disciplinary action, right?

23 A Yes.

10:46AM 24 Q In fact, they said that they didn't preclude
25 disciplinary action in this matter; is that right? That's

10:46AM 1 what the memo said?

2 A Okay.

3 Q Is that accurate?

4 A If it says that, yes.

10:46AM 5 Q Does it say that? (Handing document.)

6 A I apologize. I'm just not too familiar with

7 it, that's all.

8 Q That's fine. The last sentence.

9 A (Reviewing document.) Yes.

10:47AM 10 Q I think you testified you talked to

11 Mr. Tillard for about 45 minutes in the back of your car; is

12 that right?

13 A Yes.

14 Q And he was handcuffed the whole time?

10:47AM 15 A Yes.

16 Q And you wrote out a statement, is that right?

17 A I did.

18 Q In your handwriting not his, correct?

19 A Correct.

10:47AM 20 Q And at some point you wanted him to sign a

21 statement, correct?

22 A If he liked to, yes.

23 Q Well, you asked him: Would you like to sign

24 the statement?

10:47AM 25 A Yes.

10:47AM 1 Q You specifically remember asking him?

2 A Yes.

3 Q So if he said that I don't want to sign it,

4 that's no problem?

10:47AM 5 A Absolutely.

6 Q Well, would it be fair to say that you wanted

7 him to sign it?

8 A Well, I just wanted him to tell the truth.

9 Q Well, it's also your job to collect evidence

10:47AM 10 right?

11 A Yes.

12 Q It would be fair to say that if someone gives

13 you a statement that is an admission to committing a crime,

14 that is evidence, right?

10:48AM 15 A Yes.

16 Q And it makes the case stronger if you have an

17 admission from the person that you arrested, correct?

18 A Correct.

19 Q And that's one of the reasons you take

20 statements, right?

21 A Yes.

22 Q And that's one of the reasons you took the

23 statement in this case, correct?

24 A Yes.

10:48AM 25 Q And in your view would it make it stronger if

10:48AM 1 someone actually signed the statement?

2 A I suppose it would.

3 Q So that someone like me couldn't come up and

4 say he didn't sign it, did he?

10:48AM 5 A I suppose.

6 Q So you wanted him to sign it?

7 A Sure, yeah, absolutely.

8 Q And you asked him to get out of the vehicle

9 right?

10:48AM 10 A Yes.

11 Q And it was only at that point that you

12 unhandcuffed him?

13 A Yes.

14 Q Was anybody there when that happened?

10:48AM 15 A I believe he's now a sergeant but at the time

16 it was Officer Barton.

17 Q So Officer Barton was at your car when that

18 happened?

19 A He was nearby.

10:48AM 20 Q When you say nearby, do you mean a few feet

21 away or do you mean farther?

22 A Within yards.

23 Q Was he interacting with you in any way,

24 was he --

10:49AM 25 A No.

10:49AM 1 Q No, okay. Was he in a from what you observed
2 was he in a position that he would have seen Mr. Tillard sign
3 that statement?

10:49AM 4 A Yes.

10:49AM 5 Q There's no rule against a suspect actually
6 writing the statement himself, right?

10:49AM 7 A Not that I believe.

10:49AM 8 Q Not that you're aware of?

10:49AM 9 A No.

10:49AM 10 Q Okay. So, that's not how you do it; is that
11 right?

10:49AM 12 A It's just not how I was trained to do it.

10:49AM 13 Q Okay. But you're not familiar with any
14 General Order or anything else that says don't let him write
15 his own words on a piece of paper?

10:49AM 16 A No, I don't believe so.

10:49AM 17 Q During this time between when you were issued
18 the body camera and February 25th, 2017, were you working
19 full time?

10:50AM 20 A Yes.

10:50AM 21 Q And would it be fair to say that you were
22 making maybe 5 to 10 stops a night?

10:50AM 23 A It could be up to that amount of times, yes.

10:50AM 24 Q About maybe 50 stops a week approximately?

10:50AM 25 A It could be, yes.

Minurka - Cross - Zoglin

10:50AM 1 Q Approximately 200 stops a month, is that
2 right?

3 A I believe I only had it for about 30 minutes,
4 maybe less than 30 working days body cam at that point.

10:50AM 5 Q So it's accurate to say that 200 stops a month
6 is a fair estimate?

7 A Yes.

8 Q What you're saying is you're not sure that you
9 had the body cam for a full month?

10:50AM 10 A I know that my body camera, the one I had
11 issued, I don't think I had even put in 30 working days with
12 it on, yes.

13 Q But you clearly made many stops --

14 A Yes.

10:50AM 15 Q -- right?

16 A And I made --

17 Q Maybe not 200 but many?

18 A Correct.

19 Q And these include traffic stops, right?

10:51AM 20 A Yes.

21 Q And you made many arrests, right?

22 A I wouldn't say many arrests but I'm sure I
23 made some arrests, yes.

24 Q And during those times did you activate your
10:51AM 25 body cam?

Minurka - Cross - Zoglin

10:51AM 1 A There were a lot of times where I forgot to do
2 so.
3 Q Were there other times where you remembered to
4 do so?
10:51AM 5 A There were times, yes.
6 Q Did you wear it?
7 A Yes.
8 Q And when you're wearing it, it's not right in
9 front of you, right?
10:51AM 10 A Yes.
11 Q It's not real small. It's like about the size
12 of a cell phone?
13 A Yes.
14 Q At some point you became aware that
10:51AM 15 Mr. Tillard had made a complaint against you and Officer
16 Giancursio, is that right?
17 A Yes.
18 Q And that required you to respond to the
19 complaint?
10:51AM 20 A Yes.
21 Q And it required you to testify --
22 A Yes.
23 Q -- about, about the arrest and your other
24 interactions with Mr. Tillard, is that right?
10:51AM 25 A Yes.

10:51AM 1 Q And would it be fair to say that you were
2 upset by the fact that he had made a complaint against you?

10:52AM 3 A I wasn't necessarily upset but I just don't
4 take kindly of somebody making claims against my integrity.

10:52AM 5 Q So you didn't take kindly to it?

6 A Correct.

7 Q Are you saying it's -- you were not upset?

8 A Like I said, somebody was taking negative
9 approach on my integrity which has never been questioned
10 before and given our circumstances and our relationship, I
11 thought it was very odd that he would make a complaint of
12 that nature.

10:52AM 13 Q Okay. So, you did say in your testimony at
14 the Professional Standards Section that you were kind of
15 upset because you thought it was outrageous, is that fair?

16 A Yes.

17 Q And it required some paperwork on your part?

18 A I don't think so.

19 Q You had to respond to the allegations, right?

10:53AM 20 A Yes.

21 Q And obviously you had to take some time and
22 testify about the allegations, right?

23 A Yes.

10:53AM 24 Q And as a result of the allegations, one of the
25 things that came out of this was the finding that you had

Minurka - Cross - Zoglin

10:53AM 1 violated the General Orders in use of your body cam, is that
2 right?
3 A Yes.
4 Q Since February 25th, 2017, have there been
10:53AM 5 other occasions where you have forgotten to use your body
6 cam?
7 A Yes.
8 Q And has that resulted in any kind of memo or
9 reprimand or counseling or --
10:53AM 10 A No.
11 Q -- anything like that?
12 A No.
13 Q Okay. Could you approximate how many times
14 you've -- since then you've forgotten to wear your body cam?
10:53AM 15 A There's a handful of times. There are audits
16 and since then, I've actually been in a hundred percent
17 compliance with body cameras.
18 Q Since when?
19 A The two audits that I'm aware of.
10:54AM 20 Q Okay.
21 A I don't know if they're like biannual.
22 Q So when you -- this happened in February 2017?
23 A Yes.
24 Q So, since then, you believe there have been
10:54AM 25 two audits?

10:54AM 1 A At least that I was aware that I had made in,
2 yes.
3 Q You don't know when they were?
4 A No.
10:54AM 5 Q You said you were found in full compliance?
6 A Yes.
7 Q But you also said there were other times where
8 you forgot to turn on your body cam?
9 A Yes. If I can... Not that I can remember.
10 They were probably -- if a person's in custody more so it
11 could have been annoyance call where I just didn't activate
12 it, forgetting to turn it on. In a situation where you go to
13 a call where you didn't interact with anybody which wouldn't
14 really require you to have it on.
10:55AM 15 Q When you say wouldn't really require you to
16 have it on, when I say times that you forgot to turn it on, I
17 mean times when you were supposed to turn it on and you
18 didn't. Have there been times --
19 A There certainly have been times. I'm not sure
20 exactly how many. Probably up to until last year when I
21 started to get used to the body camera so since then, there
22 have been very few.
23 Q Would it be fair to say that the interview in
24 the car -- in your testimony before this Court you
10:55AM 25 characterized it as, it's sometimes not the standard to

Minurka - Cross - Zoglin

10:55AM 1 interview in the car?

2 A Yes, I prefer not to be -- I rather go to the

3 Public Safety Building.

4 Q And you could have done that in this case,

10:55AM 5 right?

6 A I could have.

7 Q You were in the driver's seat of a car, right?

8 A Yes.

9 Q Was there, there was -- there wasn't any

10:56AM 10 reason that Mr. Tillard at this point would have been

11 required to be kept at the scene?

12 A No.

13 Q And at some point someone did take him to the

14 Public Safety Building, right?

10:56AM 15 A They actually brought him right to Monroe

16 County Jail.

17 Q Was that Sergeant Barton?

18 A Yes.

19 Q And did you leave the scene at that point,

10:56AM 20 as well?

21 A Yes.

22 Q You characterized your relationship -- well,

23 you said something about you were upset about the complaint

24 because of the relationship that you two had?

10:56AM 25 A Yes.

Minurka - Cross - Zoglin

10:56AM 1 Q And could you just characterize what that
2 relationship was?

10:56AM 3 A It was -- I mean, I had I good rapport with
4 him. It was cordial and he was always willing to talk to me.
10:56AM 5 So it was a regular just -- it was a good relationship
6 overall. I mean, there was no harassment or any type of
7 disrespect between each other.

10:57AM 8 Q So in this cordial relationship, there was no
9 issue about the fact that you stopped him six times in four
10 months?

11 A No.

12 Q And you said he seemed willing to talk to you
13 when you encountered him during these traffic stops?

10:57AM 14 A There were sometimes where I think it was more
15 so the other officers that were around me that would, that
16 would, I guess, make him act a certain way.

17 Q But when you texted him, that was just you and
18 him, right?

19 A Yes.

10:57AM 20 Q And he didn't respond to your text?

21 A Not in those two, no.

22 Q You don't recall him ever responding to your
23 texts, right?

10:57AM 24 A I believe there was conversations, yes, but
25 not that I can provide.

Minurka - Examination by Judge Feldman

10:58AM 1 **MS. ZOGHLIN:** If I could just take a minute, Judge.

10:58AM 2 **MAGISTRATE JUDGE FELDMAN:** Yes.

10:58AM 3 (**WHEREUPON**, there was a pause in proceedings.)

10:58AM 4 **MS. ZOGHLIN:** That's all I have.

10:58AM 5 Thank you, Officer.

10:58AM 6 **MAGISTRATE JUDGE FELDMAN:** Do you have any

10:58AM 7 objection if I ask a couple questions?

10:58AM 8 **MS. ZOGHLIN:** No.

10:58AM 9 **MAGISTRATE JUDGE FELDMAN:** So why didn't you take

10:58AM 10 him back to the PSB to interview him?

10:58AM 11 **THE WITNESS:** Given the circumstances, your Honor,

10:58AM 12 he, he was very eager to speak to me and at some points I

10:58AM 13 almost had to stop him because --

10:58AM 14 (**WHEREUPON**, the court reporter interrupted

10:58AM 15 for clarification.)

10:58AM 16 **THE WITNESS:** It was my intent obviously to

10:58AM 17 interview him but I wanted to make sure he was Mirandized

10:58AM 18 before we make any conversation become the findings that day.

10:59AM 19 **MS. HARTFORD:** And, your Honor, I'm sorry, did --

10:59AM 20 in the very beginning of your response because I don't know

10:59AM 21 if the court reporter got it based on that interaction, did

10:59AM 22 you say he was eager to speak to you?

10:59AM 23 **THE WITNESS:** He was very eager to speak to me to

10:59AM 24 the point I had to stop him to get him Mirandized.

10:59AM 25 **MAGISTRATE JUDGE FELDMAN:** Was his eagerness to

Minurka - Examination by Judge Feldman

10:59AM 1 speak to you something that you expected based on your prior
2 relationship?

3 **THE WITNESS:** Yes.

4 **MAGISTRATE JUDGE FELDMAN:** And do you have any
10:59AM 5 problem in telling the Court what that prior relationship
6 was, were you friends, were you --

7 **THE WITNESS:** I have no problem, your Honor.

8 **MAGISTRATE JUDGE FELDMAN:** Okay.

9 **THE WITNESS:** My first initial interaction with him
10 was he was actually a victim of a shooting the previous
11 summer. Ever since that time, he had told me that he was
12 robbed and shot by a specific individual on Plymouth, South
13 Plymouth Avenue and I'm familiar with that group of people
14 that he was associated with. So, after he, after I had seen
11:00AM 15 him multiple times, I had driven by his house because it was
16 kind of in my area of operation. We had stopped talked and
17 he continued to give me more information on this specific
18 individual and I continued to follow up on it.

19 So, it was my intent to try to arrest the
11:00AM 20 individual that robbed and shot him because, yes, he's a
21 victim and it was never my intent to, to although I knew what
22 he was up to and what he did, you know, there's no -- it's
23 not hiding that he sells marijuana and I knew that and it
24 surely was indicative on my past interaction with him and
11:00AM 25 encounters. However, it was not my intent to be punitive and

Minurka - Examination by Judge Feldman

11:00AM 1 write him tickets every time I saw him or arrest him for
2 marijuana and it was my intent more so to arrest the bad guy
3 that shot him.

11:00AM 4 **MAGISTRATE JUDGE FELDMAN:** So in terms of the
5 severity of the crimes, you considered him more a victim of a
6 more severe crime and you were willing to overlook or not
7 harass him for selling marijuana because you wanted to get
8 his cooperation to bring the people that shot him to justice?

11:01AM 9 **THE WITNESS:** Absolutely.

11:01AM 10 **MAGISTRATE JUDGE FELDMAN:** Okay. And what were you
11 texting him about?

11:01AM 12 **THE WITNESS:** So, I've had -- I have other
13 confidential sources that I speak with that give me
14 information, not necessarily for any type of gain for
15 themselves but sometimes for their protection in this
16 situation. And I was able to corroborate the information
17 that he gave me and I did make an arrest. I did arrest
18 somebody with an illegal handgun two months later.

11:01AM 19 **MAGISTRATE JUDGE FELDMAN:** So the texting was about
20 him being a victim and you following up on that
21 investigation?

11:01AM 22 **THE WITNESS:** Not specifically for that
23 investigation but -- I guess it was more narrow, yes, towards
24 that investigation, but even on top of any other thing, if
25 there was any other information that he would have

Minurka - Cross - Zoglin

11:02AM 1 throughout, you know, that area of operation like, hey,
2 there's another guy that I believe hangs out here and he
3 might have a firearm, you know.

11:02AM 4 **MAGISTRATE JUDGE FELDMAN:** So you were kind of
5 cultivating him or seeing if he would be an informant or
6 provide you with information?

7 **THE WITNESS:** Yes.

8 **MAGISTRATE JUDGE FELDMAN:** And did he ever do that?

9 **THE WITNESS:** He did give me information, yes.

11:02AM 10 **MAGISTRATE JUDGE FELDMAN:** And was he ever
11 compensated in any way or was there ever any dropping of
12 charges or non-prosecution agreement or?

13 **THE WITNESS:** No, there was not.

11:02AM 14 **MAGISTRATE JUDGE FELDMAN:** Okay. Do you want to
15 follow up? Go right ahead.

16 **CONTINUED CROSS-EXAMINATION BY MS. ZOGLIN:**

17 Q So, what in your response just now to the
18 judge, you said at first there was a call back in August of
19 2016 that involved a shooting, right?

11:02AM 20 A I don't remember the exact date but that
21 sounds about right.

22 Q And he was shot in the foot, right?

23 A Yes.

24 Q The top of his foot?

11:02AM 25 A Yes.

Minurka - Cross - Zoglin

11:02AM 1 Q And is it fair to say that based on your
2 investigation it was your feeling that it was a --
3 A Yes.
4 Q -- self-inflicted gunshot wound?
11:03AM 5 A Yes.
6 Q So when you say he was a victim of a shooting,
7 that particular wound that you're talking about where he was
8 shot, it was your determination that he shot himself?
9 A Well, in that specific incident there was
11:03AM 10 actually two casings recovered. So there was obviously
11 somebody else shooting at him. So it was my intent that,
12 yes, he was shot at whether it was self-inflicted or not,
13 there was two casings. But he was also robbed on multiple
14 occasions of marijuana which he did indicate to me numerous
11:03AM 15 times.
16 Q And based on the information that you said you
17 arrested someone with a gun, was that in relationship to the
18 incident in August of 2016 where he shot himself?
19 A Without his cooperation, there was no way I
11:03AM 20 was able to link that. However, based on the information he
21 had provided me, names, descriptions, it was most likely that
22 individual, yes.
23 Q That was regarding that incident, right, that
24 he gave you information?
11:03AM 25 **MAGISTRATE JUDGE FELDMAN:** What incident, the

Minurka - Cross - Zoglin

11:03AM 1 shooting of the foot?

2 **MS. ZOGHLIN:** The shooting incident in August.

3 A It all stemmed from that incident, yes.

4 Q And you were also, you said, cultivating him

11:04AM 5 basically or you were hoping that he would become a

6 confidential informant, correct?

7 A If he wanted to, yes, and I have done that in

8 the past.

9 Q And he never really signed on for that, is

11:04AM 10 that fair to say?

11 A I don't think it ever came to that point yet

12 where I was able to. At first I'd like to find out whether

13 he'd be, you know, I would say accurate in his information

14 that he provided before I would give him that opportunity.

11:04AM 15 Q And are you saying that he specifically that

16 he provided information about other illegal activities

17 that -- not related?

18 A He.

19 Q Related to the gunshot incident?

11:04AM 20 A He did.

21 Q About how many times?

22 A There was one occasion specifically that I can

23 remember.

24 Q When you said that he was really eager to talk

11:04AM 25 to you, he was so eager to talk to you that you had to tell

11:05AM 1 him to slow down?

2 A Yes.

3 Q When you were -- first encountered him on

4 Doran Street, it was clear to you that he recognized you,

11:05AM 5 right?

6 A Once he drove past me, yes.

7 Q And it appeared to you that in response to

8 that he tried to evade you, right?

9 A Yes.

11:05AM 10 Q You said he pulled off at a high rate of

11 speed, yes?

12 A He wanted to avoid the police, yes.

13 Q Well, he knew that you were the police, right?

14 A Yes.

11:05AM 15 Q He knew that it was you in the car because he

16 had just seen you?

17 A Yes.

18 Q And he pulled off at a high rate of speed and

19 I believe you said on direct that he was driving erratically?

11:05AM 20 A Yes.

21 Q And then he turned, obviously, into Flint

22 Street and immediately basically bailed out of the car and

23 ran away from you, right?

24 A Correct.

11:05AM 25 Q And then it's your testimony that when you got

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11:05AM 1 him inside the car, he couldn't wait to talk to you?

2 A Yes.

3 **MS. ZOGHLIN:** Okay. Thank you.

4 **MAGISTRATE JUDGE FELDMAN:** Just for the record,

11:05AM 5 when you refer to the fact that he said he was running

6 because he had meat on him, what did you mean by meat?

7 **THE WITNESS:** Weed. Weed I apologize.

8 **MAGISTRATE JUDGE FELDMAN:** Weed not meat.

9 At any other point in time have you ever found him

11:06AM 10 in possession of a weapon or a firearm?

11 **THE WITNESS:** No.

12 **MAGISTRATE JUDGE FELDMAN:** Okay. Anything else?

13 **MS. HARTFORD:** Yes, your Honor.

14 **REDIRECT EXAMINATION BY MS. HARTFORD:**

11:06AM 15 Q Officer Minurka, Judge Feldman just asked if

16 you'd ever found him in possession of a firearm before and I

17 believe your response was no, correct?

18 A Correct.

19 Q He ever run from you before?

11:06AM 20 A No.

21 Q Had he ever evaded a traffic stop that you

22 were trying to make before?

23 A Never.

24 Q So this was the first time?

11:06AM 25 A Yes.

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11:06AM 1 Q And this was also the first time he had a gun?

11:06AM 2 A Yes.

11:06AM 3 Q And on cross-examination, you were asked about

4 prior times he had marijuana and Judge Feldman also asked you

5 about prior interactions and it was your testimony that you

6 knew him by the time that the incident in question here took

7 place?

11:07AM 8 A Yes.

11:07AM 9 Q You knew him to be a marijuana dealer,

10 correct?

11:07AM 11 A Yes.

11:07AM 12 Q You were asked on cross about whether you were

13 upset about the complaint or not and you mentioned you didn't

14 take kindly to it, I believe were approximately your words?

11:07AM 15 A Yes.

11:07AM 16 Q But regardless of that, has your testimony and

17 reporting been consistent as far as what happened from before

18 that complaint and since then?

11:07AM 19 A Yes.

11:07AM 20 **MS. ZOGHLIN:** Objection. To his determination of

21 what's consistent.

11:07AM 22 **MAGISTRATE JUDGE FELDMAN:** Overruled.

11:07AM 23 Q So you said yes?

11:07AM 24 A Yes.

11:07AM 25 Q Have you changed what you have said has

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11:07AM 1 happened after he filed that complaint?

2 A No.

3 Q And as far as the statement that he gave in

4 the car?

11:08AM 5 A Yes.

6 Q I know we talked about this on direct but you

7 advised him of his rights, correct?

8 A Yes.

9 Q And they were on that form which is in

11:08AM 10 evidence --

11 A Yes.

12 Q -- in this hearing? And you had him sign it

13 and initial it, correct?

14 **MS. ZOGHLIN:** Object to the leading, Judge.

11:08AM 15 Q Did you have him sign it and initial it?

16 **MAGISTRATE JUDGE FELDMAN:** You need to --

17 **MS. HARTFORD:** I'm sorry, Judge.

18 **MAGISTRATE JUDGE FELDMAN:** -- let me rule on the

19 objections. The objection is sustained. Next question.

11:08AM 20 Q Did you have him sign it and initial it?

21 A The written statement, yes.

22 Q So that statement was recorded -- or was that

23 statement recorded in writing?

24 A Yes.

11:08AM 25 Q But not on video?

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11:08AM 1 A Correct.

2 **MS. HARTFORD:** That's all, your Honor. Thank you.

3 **MAGISTRATE JUDGE FELDMAN:** Anything else?

4 **MS. ZOGHLIN:** No, your Honor.

11:08AM 5 **MAGISTRATE JUDGE FELDMAN:** Thanks for completing

6 your testimony. You're excused.

7 Why don't we take a five-minute break before your

8 last witness.

9 (WHEREUPON, witness was excused and a recess taken.)

11:15AM 10 (Open court, defendant present:)

11 **MAGISTRATE JUDGE FELDMAN:** The government may call

12 its next witness.

13 **MS. HARTFORD:** The government calls officer Sam

14 Giancursio.

11:16AM 15

16 SAM GIANCURSIO, having been called as a witness,

17 being duly sworn, testifies as follows:

18 **MAGISTRATE JUDGE FELDMAN:** You may proceed.

19 **DIRECT EXAMINATION BY MS. HARTFORD:**

11:16AM 20 Q Officer Giancursio, where do you work?

21 A For the Rochester Police Department.

22 Q And what do you do for the Rochester Police

23 Department?

24 A I'm a patrol officer, Genesee Section.

11:17AM 25 Q And how long have you been a patrol officer

Giancursio - Direct - Hartford

11:17AM 1 with the Rochester Police Department?

2 A Approximately six years.

3 Q And what did you do before that?

4 A Before my employment as a police officer?

11:17AM 5 Q Yes.

6 A I was --

7 Q Well, before your employment with RPD, yes.

8 A I was in the Marines.

9 Q And what kind of training did you have to

11:17AM 10 undergo to become a police officer with RPD?

11 A I went through anything from defensive tactics

12 training, training with family troubles, weapons, narcotics

13 investigations, things of that sort.

14 Q And have you gone through additional training

11:18AM 15 over the past six years in those areas as well?

16 A Yes, ma'am.

17 Q And do you have experience in training

18 involving investigating drug dealers?

19 A Yes, ma'am.

11:18AM 20 Q What about illegal firearm possession?

21 A Yes, ma'am.

22 Q Over the course of your duties with RPD, have

23 you investigated those kinds of cases, been involved in those

24 kinds of stops?

11:18AM 25 A Yes, ma'am.

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11:18AM 1 Q I'd like to direct your attention to
2 February 25th of 2017. Do you recall being involved in an
3 incident involving the defendant, Robert Tillard?

4 A Yes, ma'am.

11:18AM 5 Q Could you please tell us about how that came
6 about -- well, first of all, approximately what time was
7 that?

8 A Approximately 22:41 hours.

9 Q And how did that come about on that day?

11:19AM 10 A Well, we were in -- Officer Minurka and I were
11 operating a two badge vehicle, patrol vehicle. And we were
12 in the area of south Plymouth, 700 south Plymouth, basically
13 proactively for any kind of criminal activity.

14 Q And you said you were in the same vehicle as
11:19AM 15 Officer Minurka. What kind of vehicle was that?

16 A It was an unmarked patrol vehicle.

17 Q And was it equipped with lights or sirens?

18 A Yes.

19 Q And what does this unmarked patrol vehicle
11:19AM 20 look like?

21 A It looks like our regular marked patrol
22 vehicle but without the markings and overhead lights.

23 Q And what were the conditions that evening?

24 A It was dark, cold.

11:19AM 25 Q And how were you -- were you wearing your

Giancursio - Direct - Hartford

11:19AM 1 police uniform?

2 A Yes, ma'am.

3 Q So, please continue with what happened next

4 during this patrol.

11:20AM 5 A At some point a vehicle came to my attention

6 in the area of Exchange Street. This vehicle proceeded to go

7 towards Flint Street, at which point it navigated a left-hand

8 southbound turn -- well, it had be southeast, if I'm not

9 mistaken down Flint Street towards the dead-end at a, I'd

11:20AM 10 say, a high rate of speed. And as soon as it turned on to

11 Flint Street, that's at the point where it actually initiated

12 the turn signal which is in violation of 1163(b), failure to

13 signal hundred foot prior to turning.

14 Q Did you see -- were you able to see a

11:20AM 15 passenger in the vehicle at that time, anybody in the

16 passenger seat?

17 A No, ma'am.

18 Q Did you actually learn that there was somebody

19 in the passenger seat?

11:20AM 20 A Yes, ma'am.

21 Q But not at that time, is that accurate?

22 A That's correct.

23 Q Okay. So after this vehicle turned left on

24 Flint Street and activated the signal, can you describe the

11:21AM 25 manner -- well, not necessarily after, but during this,

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11:21AM 1 during this time can you describe the manner in which he was
2 driving?

3 A He was -- it appeared to be evasive, traveling
4 fast and attempting to, again, evade police.

11:21AM 5 Q At some point did you or Officer Minurka
6 activate the lights on the vehicle?

7 A Yes, ma'am, Officer Minurka did.

8 Q What did the defendant do?

9 A He continued down Flint Street.

11:21AM 10 Q And what happened as the defendant continued
11 in his vehicle down Flint Street?

12 A He eventually came to a stop towards the --
13 that dead-end on Flint Street.

14 Q And when he came to a stop, what happened
15 next?

16 A He jumped out of the vehicle running towards a
17 field of sorts southbound as I gave chase.

18 Q So you said you gave chase. Was that on foot?

19 A Yes, ma'am.

11:22AM 20 Q Can you please describe what happens during
21 this foot chase where you're chasing after the defendant
22 who's running away from you?

23 A So, as he's running, I continued to run
24 directly behind him attempting to close the distance,
25 illuminating him with my flashlight. I gave commands,

Giancursio - Direct - Hartford

11:22AM 1 please, show me your hands. As the defendant pulled his --
2 put his right hand into his waistband and, you know, again, I
3 continued to chase him, got within, I'd say, approximately 6
4 foot of him when I observed him take his right hand, pull it
11:22AM 5 up towards the left side of his body and then shoot it
6 straight out to the right side of his body, at which point I
7 heard a thud to my right and the defendant relatively soon
8 after went down to the ground.

9 Q What did you do next after the defendant went
11:23AM 10 down to the ground after?

11 A I then handcuffed him and assisted him to his
12 feet.

13 Q And what did you do next after getting the
14 defendant to his feet?

11:23AM 15 A I was bringing him back to the patrol car.

16 Q And did he say anything during that time?

17 A At that point he said something to the effect
18 of, man, I was just trying to get rid of some weed.

19 Q Did you ask him any questions before that?

11:23AM 20 A No, ma'am.

21 Q Were you talking to him or saying anything to
22 him to elicit that response?

23 A No, ma'am.

24 Q And after you heard him say that, what did you
11:24AM 25 do next?

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11:24AM 1 A I brought him to the patrol vehicle and patted
2 him down, at which point I found an assortment of marijuana
3 on his person.

11:24AM 4 Q When you say an assortment of marijuana, can
5 you please describe how much marijuana there was?

11:24AM 6 A I was able to pull larger sandwich baggie
7 filled with 56 dime size ziplock baggies that had a 8 ball
8 logo on them inside of that sandwich baggie.

11:24AM 9 Q Now, in your experience and training, is that
10 packaging consistent with individual use or distribution?

11:24AM 11 A Distribution.

11:24AM 12 Q And what did you do at that point?

11:24AM 13 A At that point I just placed him inside the
14 vehicle and went back towards the area where I had heard the
15 sound and observed the defendant's actions.

11:24AM 16 Q Now, he you testified that he said he was
17 trying to get rid of some weed. Did the thud -- in your
18 experience, did the thud that you heard sound like he threw
19 some weed.

11:25AM 20 A No, ma'am.

11:25AM 21 Q Now, when you searched the area where you saw
22 that, did you find anything?

11:25AM 23 A Yes, ma'am, I did.

11:25AM 24 Q And what did you find?

11:25AM 25 A I found a Sig Sauer 9mm handgun right where

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11:25AM 1 the defendant had made his motions.

2 Q And in your experience did the sound that you

3 heard was that consistent with the gun that you found hitting

4 the ground?

11:25AM 5 A Yes, ma'am.

6 Q Could you describe how the gun appeared when

7 you found it?

8 A The gun appeared to be not affected by the

9 current weather which was snow on the ground and dry.

11:25AM 10 Q Did you take pictures of the gun when you

11 found it?

12 A Yes, I did.

13 Q And how did you -- what did you use to take

14 those pictures?

11:26AM 15 A My body camera.

16 Q I'm going to show you Government's 6 and 7,

17 which I've previously shown to defense. Do you recognize

18 those?

19 A Yes, ma'am, I do.

11:26AM 20 Q And how is it that you recognize those?

21 A These appear to be the pictures taken by my

22 body worn camera.

23 Q And do they fairly and accurately depict

24 the -- what's shown in them at the time that you took the

11:26AM 25 picture?

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11:26AM 1 A Yes, ma'am.

2 **MS. HARTFORD:** I'd offer Government's 6 and 7.

3 **MS. ZOGHLIN:** No objection.

4 **MAGISTRATE JUDGE FELDMAN:** Without objection,

11:26AM 5 received in evidence.

6 Q I'd like to put Government's Exhibit 6 on the
7 visualizer. So this is Government Exhibit 6. And Government
8 Exhibit 7.

9 Officer Giancursio, do those photos appear to
11:27AM 10 be roughly the same?

11 A Yes, ma'am.

12 Q I have put officer -- or I'm sorry Government
13 Exhibit 6 back on the visualizer. So can you please describe
14 what we're looking at here?

11:27AM 15 A This is the handgun that was observed in the
16 area where the defendant made his throwing actions. It's a
17 black Sig Sauer handgun that's laying on top of the snow but
18 as you can see, there's no sort of inclement weather,
19 anything from snow that would be on top of that gun. It
11:27AM 20 appears dry.

21 Q You mentioned that you took this photograph
22 with your body camera. I'd like to talk to you a little bit
23 about your use of body camera on this day.

24 During this incident, did you record video
11:28AM 25 footage of the chase and apprehension of the defendant?

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11:28AM 1 A No, ma'am.

11:28AM 2 Q Why not?

11:28AM 3 A During the pursuit of the suspect, I

4 initiated -- or attempted to initiate the record button on

5 that body worn camera. However, due to it being new to me --

6 there are two separate buttons: One for video and one for

7 picture. If the body worn camera is powered off and you push

8 the picture button which is located next to the camera

9 button, it will not -- it won't take a picture. It won't

11:28AM 10 activate. It won't turn on. However, if you do activate the

11 camera button to video, you have to hold it for an

12 approximate amount of time that I don't know the specific

13 answer to it.

14 Q I'm sorry you said a camera button to video.

11:28AM 15 Is that a separate video button or the same camera button?

16 A There's two separate buttons, the one for --

17 I'm sorry. One for the video and one for the camera.

18 Q So, at some point did you realize that you had

19 not activated the video?

11:29AM 20 A Yes, ma'am. I realized I hadn't activated my

21 video as soon as I went to go take pictures of the handgun.

22 I popped my camera off my body, went to look to see what was

23 going on, to push the actual photograph button and observed

24 that it was powered off.

11:29AM 25 Q And so you pieced together what must have

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11:29AM 1 happened based on your recollection and the fact that the
2 video was not recording despite --

3 **MS. ZOGHLIN:** Objection, leading.

4 **MAGISTRATE JUDGE FELDMAN:** Agreed. Sustained.

11:29AM 5 Q I'm sorry. I'm trying to make sure that I
6 understand exactly how this happened.

7 Are you basing your conclusion on what
8 happened off of your recollection and -- off of your
9 recollection?

11:29AM 10 A Yes, ma'am.

11 Q And the fact that you -- are you also basing
12 that off of realizing after the fact that it was not
13 recording video?

11:30AM 14 A Yes, that's correct and follow on usage of the
15 camera it was able to help me ascertain the reason why it
16 didn't turn on.

17 Q When was that camera issued to you in relation
18 to this incident?

19 A It was approximately three to four weeks prior
20 to this.

21 Q And as a result of your failure to record it,
22 the video -- I'm sorry. As a result of your failure to
23 record video during this incident, during the chase, did you
24 receive any sort of counseling?

11:30AM 25 A Yes, I did.

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11:30AM 1 Q And what was that?

11:30AM 2 A It was a counseling memorandum for refresher

11:30AM 3 on body worn camera policy.

11:30AM 4 Q Now, after you located the gun, did you

11:30AM 5 collect it?

11:30AM 6 A No, I did not.

11:30AM 7 Q Did you stay with that gun until it was

11:30AM 8 collected?

11:30AM 9 A Yes, ma'am.

11:30AM 10 Q And who collected that firearm?

11:30AM 11 A It was technician Nittie (phonetic).

11:30AM 12 Q And did you observe technician Nittie collect

11:30AM 13 that firearm?

11:30AM 14 A Yes, ma'am, I did.

11:31AM 15 Q And did you or other law enforcement make any

11:31AM 16 attempt to locate the magazine to that firearm?

11:31AM 17 A Yes, ma'am, I did.

11:31AM 18 Q And what was that attempt?

11:31AM 19 A Canine Nowak (phonetic), who his partner is a

11:31AM 20 nitrate canine, which is trained in tracking any kind of

11:31AM 21 firearms or bullets or anything to that effect, was called

11:31AM 22 down to the scene. His dog ran through the area and the

11:31AM 23 results were negative.

11:31AM 24 **MS. HARTFORD:** That's all I have. Thank you.

11:31AM 25 **MAGISTRATE JUDGE FELDMAN:** Just so I understand it.

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11:31AM 1 So there's -- that firearm's not loaded with anything?

2 **THE WITNESS:** That's correct, sir.

3 **MAGISTRATE JUDGE FELDMAN:** And the opening that you
4 see in the bottom of Exhibit 6 would be where you placed
11:31AM 5 the --

6 **THE WITNESS:** Magazine.

7 **MAGISTRATE JUDGE FELDMAN:** Magazine, okay.

8 **THE WITNESS:** Yes, sir.

9 **MAGISTRATE JUDGE FELDMAN:** Okay.

11:32AM 10 **CROSS-EXAMINATION BY MS. ZOGHLIN:**

11 Q Morning, Officer Giancursio.

12 A Morning.

13 Q Officer Giancursio, have you worked with
14 officer Minurka before this incident?

11:32AM 15 A Yes, ma'am.

16 Q And have you worked with him since this
17 incident?

18 A He was moved to a separate platoon. So I
19 can't recall what point he was moved but I have seen him on
20 scenes but not worked with him in a two-badge capacity, I
21 don't believe, since this incident.

22 Q And at the time of this incident occurred, can
23 you tell me approximately how long you'd been working with
24 Officer Minurka?

11:32AM 25 A Well, we came on the job at the same time so

11:32AM 1 since February of 2014.

2 Q Okay. Were you in the academy together?

3 A Yes, ma'am.

4 Q And did you know him then?

11:32AM 5 A Not prior to the academy, just during the

6 academy.

7 Q Okay. But you got to know him at the academy?

8 A Yes, ma'am.

9 Q On -- did you know -- before this date,

11:33AM 10 February 25th, 2017, did you know Robert Tillard?

11 A No, ma'am.

12 Q Had you ever had any encounter with him

13 before?

14 A I did but that was only brought to my

11:33AM 15 attention after the fact during the PSS investigation.

16 Q And what was that interaction?

17 A My interaction was, if my recollection serves

18 me correct, it was a traffic stop involving the defendant

19 where I was -- I believe I was a backup officer to a traffic

11:33AM 20 stop.

21 Q Was Officer Minurka involved in that?

22 A I don't recall who was all there.

23 Q Do you remember any interaction with

24 Mr. Tillard at all?

11:33AM 25 A No, ma'am.

11:33AM 1 Q So, before February 25th, 2017, would it be
2 fair to say you really didn't have an impression of
3 Mr. Tillard?

4 A Me personally, no, ma'am.

11:33AM 5 Q Had Officer Minurka ever spoken to you about
6 him?

7 A I can't be for certain on that, ma'am.

8 Q On this date when you were, you were in the
9 same car with Officer Minurka, right?

11:34AM 10 A Yes, ma'am.

11 Q And at some point you passed the car that
12 Mr. Tillard was in, correct?

13 A Yes, ma'am.

14 Q You were the passenger; is that right?

11:34AM 15 A I was the passenger in a two-badge vehicle,
16 yes, ma'am.

17 Q At that time did Officer Minurka say anything
18 to you about Mr. Tillard?

19 A He had drawn my attention to a vehicle. I
11:34AM 20 can't remember the specifics of the conversation that had
21 transpired, though.

22 Q And Mr. Tillard was the driver, right?

23 A Again, I didn't know that until after the
24 fact.

11:34AM 25 Q You didn't notice who was in the car at all, I

11:34AM 1 mean, did you notice the car at all?

2 A I noticed the car but that was brought to my

3 attention by Officer Minurka.

4 Q At some point your car started following that

11:34AM 5 car, right?

6 A That's safe to say so, yeah.

7 Q And you went around the block specifically to

8 find that car and follow it, right?

9 A Yes, ma'am.

11:34AM 10 Q And did Officer Minurka explain to you why he

11 was doing that?

12 A Again, at this point I can't recall the

13 specifics of our conversation, ma'am.

14 Q You don't recall him telling you that, that he

11:35AM 15 didn't think Tillard had a license?

16 A I don't recall that. However, if it was in my

17 report, I would have documented it.

18 Q You don't have any recollection of the

19 conversation as you sit here today, is that right?

11:35AM 20 A At this point, no, ma'am.

21 Q Do you recall seeing the car that Mr. Tillard

22 was in turn left on to Flint Street?

23 A Yes, ma'am.

24 Q Did -- there were a couple citations issued in

11:35AM 25 this case to Mr. Tillard. Did you do that or did Officer

11:35AM 1 Minurka do that or someone else?

2 A I don't recall. I believe, I believe I may

3 have but I don't recall for certain. It would be in my crime

4 report or the UTT would say.

11:35AM 5 Q Would it be fair to say that you didn't issue

6 a citation for erratic driving or reckless driving?

7 A I don't know the specific UTT.

8 Q If there were two UTTs, one for driving

9 without a license and one for failing to signal within a

11:36AM 10 hundred feet of the turn, would it be fair to say that you

11 didn't issue any others?

12 A If I had issued tickets, I don't, I don't

13 know, ma'am.

14 Q Let me talk to you a little bit about this

11:36AM 15 area where Mr. Tillard pulled over on Flint Street. It's

16 fairly close to the dead-end, right?

17 A Yes, there's a dead-end near the river path.

18 Q And the area itself is a fairly, is a wooded

19 area?

11:36AM 20 A (No response.)

21 Q The place where he ran into?

22 A Yes, ma'am.

23 Q I think you described it before as an

24 overgrown briar patch?

11:36AM 25 A That sounds about right. So there's -- the

11:36AM 1 way it's lined up like towards if you went more towards the
2 river path, there's a lane of trees that go down but other
3 than that, the field that we were running was like, to my
4 recollection, like rose bush, if you will.

11:37AM 5 Q I think you described it before as pricker
6 bushes --

7 A Yeah.

8 Q -- is that right?

9 A Yeah, pricker.

11:37AM 10 Q And there's an old shed there?

11 A (No response.)

12 Q Right near where you --

13 A Close to the road, yes, ma'am.

14 Q Okay. And would it be fair to say people put

11:37AM 15 debris back there like old tires?

16 A In front of the shed I've seen them.

17 Q In the general area where Mr. Tillard was

18 running?

19 A I don't recall.

11:37AM 20 Q Looking at the Exhibit 6 on the visualizer, do
21 you see this blue object near the gun?

22 A Yes, ma'am.

23 Q What is that?

24 A I have no idea.

11:37AM 25 Q When you were chasing Mr. Tillard, the area

11:37AM 1 which you were running was dark; is that right?

2 A Yes, ma'am.

3 Q And what you had to illuminate your way was

4 just your flashlight, right?

11:37AM 5 A Yes, ma'am.

6 Q And did you notice Officer Minurka when you

7 were running after Mr. Tillard?

8 A No, ma'am, I didn't.

9 Q Did you see his flashlight?

11:38AM 10 A I don't recall seeing his flashlight, no,

11 ma'am.

12 Q So at the time you're chasing Mr. Tillard, you

13 have your flashlight and you have your duty belt on, right?

14 A Yes, ma'am.

11:38AM 15 Q And you're running through what you described

16 previously as a briar patch, right?

17 A Yes, ma'am.

18 Q And there's snow on the ground?

19 A Yes, ma'am.

11:38AM 20 Q Do you also recall there being logs like

21 falling trees on the ground?

22 A I don't recall that, no, ma'am.

23 Q Had you ever been in that area before?

24 A Not -- no.

11:38AM 25 Q Have you been there since?

11:38AM 1 A Not back towards that field, no, ma'am.

11:38AM 2 Q When you were -- after Mr. Tillard got out of

11:38AM 3 the car, how soon until you got out of your car and started

11:38AM 4 chasing him?

11:38AM 5 A It was almost simultaneously.

11:38AM 6 Q And how far was he in front of you?

11:38AM 7 A I'm not sure the exact distance at that point.

11:38AM 8 Q Could you approximate the distance?

11:38AM 9 A I'd say approximately 15, 20 feet,

11:39AM 10 approximately.

11:39AM 11 Q And as you continued to chase him, did you

11:39AM 12 gain ground on him?

11:39AM 13 A Yes, ma'am, I did.

11:39AM 14 Q And at some point did -- were you close enough

11:39AM 15 to direct him to stop?

11:39AM 16 A I was, I -- the entire encounter I believe I

11:39AM 17 was close enough to direct him to stop.

11:39AM 18 Q And you did call out that he should stop,

11:39AM 19 right?

11:39AM 20 A Yes, ma'am.

11:39AM 21 Q And he stopped on his own, right?

11:39AM 22 A Yes, I believe I -- my specific words were,

11:39AM 23 get -- police, get on the ground or something to that effect.

11:39AM 24 Q And he got on the ground?

11:39AM 25 A Yes, ma'am.

11:39AM 1 Q Now, how long total would you say it was
2 between the time you started chasing him until the time he
3 was on the ground?

11:39AM 4 A I don't know, ma'am.

11:39AM 5 Q Was it seconds, minutes, longer?

11:39AM 6 A I don't think it was a full minute but I, I
7 don't know.

11:39AM 8 Q Okay.

11:39AM 9 A Seemed fairly quick.

11:40AM 10 Q And how soon after he took off did you see
11 what you described as the throwing motion?

11:40AM 12 A I don't know the exact time span, ma'am.

11:40AM 13 Q You're behind him, right?

11:40AM 14 A Yes, ma'am.

11:40AM 15 Q And did he -- what did he do with his arms
16 that you were described before as the throwing motion --

11:40AM 17 A As --

11:40AM 18 Q -- what did you see?

11:40AM 19 A As I said, when I was behind him, I observed
20 him reaching in his waistband. So like almost like a
21 shoulder would jump with his elbow and go down into his waist
22 and then it comes back up. So his right hand and arm, entire
23 arm goes over to the left side of his body and then it goes
24 straight over towards the right horizontally towards his
25 right side of his body (indicating).

11:40AM 1 Q Now, presumably his waistband is not in your
2 view, right, because you're behind him?

11:40AM 3 A Well, the back of his body waistband -- as far
4 as the front waistband you're saying?

11:40AM 5 Q Yes.

11:40AM 6 A No.

11:40AM 7 Q And what you -- when you're saying he reached
8 into something, was that in the front or was that in the
9 back?

11:41AM 10 A It was in the front.

11:41AM 11 Q So you didn't actually see him pull something
12 out of his waistband, is that right?

11:41AM 13 A No, ma'am, I did not.

11:41AM 14 Q You saw him -- what you said was move his arm
15 toward the right?

11:41AM 16 A From the left to the right, yes, ma'am.

11:41AM 17 Q Did you actually see an object?

11:41AM 18 A No, I did not.

11:41AM 19 Q You didn't see what, if anything, left his
20 hand?

11:41AM 21 A No, ma'am.

11:41AM 22 Q And at the time you were running, are you
23 saying that you heard a sound?

11:41AM 24 A Yes, ma'am.

11:41AM 25 Q Okay. After he stopped, did you put him in

11:41AM 1 handcuffs?

2 A Yes, I did.

3 Q And how soon after you got there did Officer

4 Minurka get there?

11:41AM 5 A I don't know. I don't remember.

6 Q Was he there when you handcuffed him?

7 A I believe he was but I can't say for certain

8 that he was. I can't recall.

9 Q Did you immediately look for the object that

11:41AM 10 you thought Mr. Tillard had thrown?

11 A No, I had taken the defendant to the patrol

12 vehicle.

13 Q Did you tell Officer Minurka what you had

14 seen?

11:42AM 15 A I don't recall.

16 Q So, you took him to his patrol -- the patrol

17 vehicle. Did you have anybody stay in the area where you

18 thought you saw him throw something?

19 A I, I don't know, I don't know if Officer

11:42AM 20 Minurka stayed there or not. I don't recall.

21 Q But it was you who located the weapon, right?

22 A Eventually after he was placed into the

23 vehicle, yes, ma'am.

24 Q So, about how long after you took him into

11:42AM 25 custody did you locate the weapon?

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11:42AM 1 A However long it would have taken me to walk
2 back to the patrol vehicle and back.

11:42AM 3 Q You didn't have to do any paperwork or report
4 in to anybody, you just gave him -- you handed him to someone
5 else?

11:42AM 6 A No, I placed him in the back of the vehicle,
7 closed the door and then walked back up. I can't recall. I
8 believe there was another vehicle showing up at that point
9 but I can't say for certain.

11:42AM 10 Q You recall finding the gun, right?

11:42AM 11 A Yes, ma'am.

11:42AM 12 Q And how far was the gun from the place that he
13 had fallen on the ground?

11:42AM 14 A Not very far. Maybe, an proximate, 8 foot,
15 maybe.

11:43AM 16 Q Did you have to look around for it or did you
17 go right to it?

11:43AM 18 A I walked right back to where the -- the area
19 where all this had transpired, shown my spotlight in the
20 ground and right there it was observed.

21 Q You testified before about the -- let me go
22 back for a minute. When he was on the ground when you first
23 caught up to Mr. Tillard, did he say anything to you?

24 A When he was on the ground, no, ma'am.

11:43AM 25 Q Did he say anything to you between the time

11:43AM 1 that you took him into custody on the ground and the time
2 that you put him in your patrol car?

3 A Yes, he did.

4 Q And could you explain to me when that was?

11:43AM 5 Was it as you were taking him into custody, was it as you
6 were walking, was it after you were putting him into the car?

7 A To my best recollection it was after he was
8 handcuffed standing walking toward the vehicle, to the best
9 of my recollection.

11:44AM 10 Q And was Officer Minurka with you at the time?

11 A As I said, I don't really recall where he was.

12 Q Now, you talked before about the body worn
13 camera. You said you had gotten it maybe three or four weeks
14 before?

11:44AM 15 A I believe it was around that time, ma'am.

16 Q Sometime in January, right?

17 A Yes.

18 Q And this was February 25th?

19 A Yes.

11:44AM 20 Q And when you got it, you received some
21 training on it, right?

22 A Yes.

23 Q And you're aware that there were general
24 orders regarding use of the body camera, right?

11:44AM 25 A They were being developed, yes.

11:44AM 1 Q Well, they actually were issued June before,
2 in 2016, right?

11:44AM 3 A I don't recall the specific time but they're
4 still being updated and changed to --

11:44AM 5 Q Well --

11:44AM 6 A -- this point.

11:44AM 7 Q Because General Orders are frequently updated,
8 right?

11:44AM 9 A I wouldn't say frequently but with a new
10 issuance of something new like this, yeah, to begin with,
11 they're generally...

11:45AM 12 Q So it's changed other time?

11:45AM 13 A Yes.

11:45AM 14 Q But the General Orders had already been issued
15 when you made this arrest?

11:45AM 16 A Yes.

11:45AM 17 Q Okay. And --

11:45AM 18 A At least an outline.

11:45AM 19 Q Excuse me?

11:45AM 20 A At least like an outline of them, yes.

11:45AM 21 Q Well, the General Orders had specific rules
22 about when you're supposed to use the body camera, right?

11:45AM 23 A I don't recall what the specific rules were
24 back in June 2016, ma'am.

11:45AM 25 Q Okay. Well, if I showed you a copy of the

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11:45AM 1 General Orders, would that refresh your recollection about
2 when they may have been issued?

3 **MAGISTRATE JUDGE FELDMAN:** The only General Orders
4 that would be relevant would be the ones that were in effect
11:46AM 5 at the time of this incident, correct?

6 **MS. ZOGHLIN:** That's what I'm talking about.

7 **MAGISTRATE JUDGE FELDMAN:** That's what you're
8 talking about?

9 **MS. ZOGHLIN:** Yes.

11:46AM 10 **MAGISTRATE JUDGE FELDMAN:** So from the time they
11 were first issued in June --

12 **MS. ZOGHLIN:** Right.

13 **MAGISTRATE JUDGE FELDMAN:** -- to the date of this
14 incident it was the same General Orders?

11:46AM 15 **MS. ZOGHLIN:** That's my understanding, yes.

16 **MAGISTRATE JUDGE FELDMAN:** And you have copies of
17 those which you're going to hand to the witness?

18 **MS. ZOGHLIN:** I do.

19 **MAGISTRATE JUDGE FELDMAN:** Okay.

11:46AM 20 Q (Handing document.)

21 A Okay.

22 **MAGISTRATE JUDGE FELDMAN:** Are they marked?

23 **MS. ZOGHLIN:** No.

24 **MAGISTRATE JUDGE FELDMAN:** Let's mark them.

11:46AM 25 **MS. ZOGHLIN:** Okay.

11:47AM 1 Q So showing what's been marked Defendant's A,
2 could you take a look at that.

3 A (Reviewing document.)

4 Q Does that appear to be the RPD General Orders
11:47AM 5 regarding use of a body camera?

6 A Yes.

7 Q Okay.

8 A Some of this, some of it's changed now, but.
9 Is there a specific point you want to direct me to?

11:48AM 10 Q Yeah, if you could just hand it back. Would
11 it be fair to say that this is more than an outline, right,
12 it's basically a 23-page document with exhibits?

13 A I didn't count the exact number but that
14 sounds fair.

11:48AM 15 Q Didn't appear to you to be an outline, did it?

16 A Well, I believe that by me saying outline,
17 this was taken out of context. What I mean, that's the
18 outline for the General Order and it would be updated from
19 there on out. So I didn't mean it was a couple two-,
11:48AM 20 three-liners. I just meant that it's the general idea of
21 what will be in place.

22 Q At the time that you made this arrest,
23 February 25th, would it be fair to say that the General
24 Orders set out times when using your body camera was
11:49AM 25 mandatory?

11:49AM 1 A I -- yeah, I believe that's, it's fact.

11:49AM 2 Q And it was mandatory during any enforcement

11:49AM 3 activity, correct?

11:49AM 4 A Yes. However, I believe there's an exception

11:49AM 5 to that.

11:49AM 6 Q Okay.

11:49AM 7 A I could be mistaken based on updates, too, I'm

11:49AM 8 not sure.

11:49AM 9 Q What I'm talking about is the policy that was

11:49AM 10 in effect on February 25th, 2017. Would it be fair to say

11:49AM 11 that the body camera policy required that all enforcement

11:49AM 12 activities be recorded?

11:49AM 13 A It's -- it would be yes. However, again, I

11:49AM 14 believe there was exceptions to that case, as far as --

11:49AM 15 again, I can't remember if it's after February 25th, 2016,

11:49AM 16 I'd have to be fact checked on this. But I believe there's

11:49AM 17 exceptions due to officer safety and stuff like that written.

11:49AM 18 Q There were no exceptions that would have

11:49AM 19 applied to this particular incident, correct?

11:50AM 20 **MAGISTRATE JUDGE FELDMAN:** Well, you're asking him

11:50AM 21 about a document which you have and he doesn't have. The

11:50AM 22 document is the document. I think it might be easier if you

11:50AM 23 point him to the section that you're relying on and ask him

11:50AM 24 if he agrees with it.

11:50AM 25 Q This might be easier.

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11:50AM 1 **MAGISTRATE JUDGE FELDMAN:** Okay.

11:50AM 2 Q Officer Giancursio, you received -- you went

 3 through a Professional Standards process regarding this

 4 incident, right?

11:50AM 5 A Yes, ma'am, I did.

11:50AM 6 Q And the outcome of that process was that you

 7 received a counseling memorandum about the body worn camera

 8 policy, correct?

11:50AM 9 A Yes, ma'am, that's correct.

11:50AM 10 Q And that was specifically a memo to you from

 11 Sergeant Perrone, correct?

11:50AM 12 A Yes, ma'am.

11:50AM 13 Q And that memo found that you had violated

 14 department policies regarding the body worn camera, correct?

11:50AM 15 A Yes, ma'am.

11:50AM 16 Q And specifically that memo to you said that

 17 the body worn camera policy at the time required that it be

 18 used for all enforcement activity specifically arrests,

 19 pursuits and detention, correct?

11:51AM 20 A That sounds correct. I don't have the sheet

 21 in front of me.

11:51AM 22 Q Would looking at the memo you got refresh your

 23 recollection?

11:51AM 24 A Yes, ma'am.

11:51AM 25 Q Okay. (Handing document.)

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11:51AM 1 A (Reviewing document). Yes, ma'am, that's
2 correct.

3 Q Okay. So that was the -- those were the rules
4 at the time, right?

11:51AM 5 A Yes, ma'am.

6 Q And pursuing a car and then chasing someone,
7 that would be considered an enforcement activity --

8 A Yes, ma'am.

9 Q -- right? And that's why you got this
11:51AM 10 counseling memo because it was found that you had violated
11 department policy, correct?

12 A Department General Orders, yes, ma'am.

13 Q Okay. The General Orders reflect the policy
14 of the Rochester Police Department?

11:52AM 15 A You're confusing me now.

16 Q Well, you made a distinction. What's the
17 distinction? What's the difference?

18 A I don't know.

19 Q Okay. So you violated the RPD policy
11:52AM 20 regarding body worn cameras, correct?

21 A The reason why I said general orders because I
22 believe I read a line where it says some sort of GO, yes.

23 Q Okay. You violated the General Orders,
24 correct?

11:52AM 25 A If that's what the paperwork says.

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11:52AM 1 Q No. I'm not asking you what the paper said.
2 I'm asking you whether there was a finding that you had
3 violated the General Orders regarding the use of a body worn
4 camera?

11:52AM 5 A If that's what the document says, ma'am.

6 Q I'm asking you. I'm not asking what the
7 document says. Surely, you know whether you were found to be
8 in violation of this policy, correct?

9 A I thought I already an -- if I could refresh
11:52AM 10 my recollection with the document, I could answer that
11 question.

12 Q (Holding document.)

13 A (Reviewing document.) This says nothing about
14 GOs. It just says body worn camera policy.

11:53AM 15 Q Okay.

16 A (Reviewing document.)

17 **MAGISTRATE JUDGE FELDMAN:** When you read, read to
18 yourself. We got to take it down.

19 **THE WITNESS:** Oh, I'm sorry.

11:53AM 20 **MAGISTRATE JUDGE FELDMAN:** That's okay.

21 Q So I believe the question was: You were found
22 to be in violation of RPD policy regarding the use of the
23 body worn cameras?

24 A Yes, ma'am.

11:53AM 25 Q On February 25th, 2017?

11:53AM 1 A Yes, ma'am.

2 Q You made a mistake?

3 A Yes, ma'am.

4 Q Now, when you recovered the weapon, you took

11:53AM 5 pictures with your body worn camera, correct?

6 A That's correct.

7 Q So you knew how to do that, right?

8 A That's correct.

9 Q Because you wanted to document that you had

11:54AM 10 found the gun, right?

11 A Yes, ma'am.

12 Q Regarding this memorandum, you were advised

13 that the conduct or similar conduct on your part may result

14 in disciplinary action, correct?

11:54AM 15 A Yes, ma'am.

16 Q Did you observe Mr. Tillard in Officer

17 Minurka's custody?

18 A No, ma'am.

19 Q Did you ever observe them in the car together?

11:54AM 20 A No, ma'am.

21 Q When you -- oh, you stood by the gun until

22 technician Nittie came, correct?

23 A Yes, ma'am.

24 Q And by the time you returned from that, was

11:54AM 25 Officer Minurka still there with Mr. Tillard?

11:54AM 1 A To my recollection, no.

11:54AM 2 Q You never heard Mr. Tillard make any

11:54AM 3 statements other than the one that you've testified to here;

11:54AM 4 is that right?

11:54AM 5 A Correct.

11:54AM 6 Q So other than "I was just trying to get rid of

11:54AM 7 some weed"?

11:54AM 8 A Yes, ma'am.

11:54AM 9 Q And you never saw him sign a statement,

11:55AM 10 correct?

11:55AM 11 A No, ma'am, I did not.

11:55AM 12 Q You never saw him get out of his car and stand

11:55AM 13 with -- I'm sorry, get out of your car and stand with Officer

11:55AM 14 Minurka and Sergeant Barton, did you see that?

11:55AM 15 A No, ma'am.

11:55AM 16 Q The investigation that the Professional

11:55AM 17 Standards Section conducted, you were required to testify

11:55AM 18 there; is that right?

11:55AM 19 A Yes, ma'am.

11:55AM 20 Q Since this incident, have there been other

11:55AM 21 incidents where you -- well, let me clarify.

11:55AM 22 Are you saying that you tried to activate your

11:55AM 23 body cam but, instead, you activated -- you pressed the

11:55AM 24 photo button?

11:56AM 25 A Yes, ma'am.

11:56AM 1 Q Have there been any incidents since that time
2 that you've done that?

3 A Yes, ma'am.

4 Q And have you been counseled or disciplined or
11:56AM 5 reprimanded in any way?

6 A I received training, yes, ma'am.

7 Q Well, I'm not asking whether you received
8 training. Have there been specific incidents where you
9 either failed to activate your body camera or you pushed the
11:56AM 10 wrong button that you have been counseled about since this
11 incident?

12 A Yes.

13 Q How many times?

14 A I don't know the specific number.

11:56AM 15 Q Well, was it closer to once or closer to ten
16 times?

17 A Closer to once.

18 Q And you remember specifically that -- did you
19 get another one of those memos?

11:56AM 20 A I don't -- I can't say for certain. I can't
21 answer that question.

22 Q Were you ever -- have you ever been
23 reprimanded or disciplined in any way regarding your use of
24 the body camera?

11:57AM 25 A No, ma'am.

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11:57AM 1 **MS. ZOGHLIN:** Thank you.

11:57AM 2 **MAGISTRATE JUDGE FELDMAN:** Anything else?

11:57AM 3 **MS. HARTFORD:** Briefly.

11:57AM 4 **REDIRECT EXAMINATION BY MS. HARTFORD:**

11:57AM 5 Q Officer Giancursio, you mentioned you were on
11:57AM 6 proactive patrol in that area?

11:57AM 7 A Yes, ma'am.

11:57AM 8 Q Would you -- would you classify it as a high
11:57AM 9 crime area or no?

11:57AM 10 A Yes, ma'am, I would.

11:57AM 11 **MS. ZOGHLIN:** Objection.

11:57AM 12 **MAGISTRATE JUDGE FELDMAN:** Sustained. I think that
11:57AM 13 goes outside the scope of cross-examination.

11:57AM 14 Q Okay. Officer Giancursio, on
11:57AM 15 cross-examination you were asked more details about the area
11:57AM 16 where the gun was found, what was surrounding it and if you
11:57AM 17 knew what this blue object was in Government Exhibit 6.
11:57AM 18 Based on your observations, did you -- could you tell
11:57AM 19 anything about how long the blue object had been there in
11:57AM 20 comparison to the gun?

11:57AM 21 A Yes, ma'am. It appears that the -- it's snow
11:57AM 22 covered on top of the blue object. However, the handgun has
11:57AM 23 no snow on top of it, as I said previously.

11:57AM 24 Q Was there anything else about the snow
11:57AM 25 surrounding the handgun that helped you make any

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11:58AM 1 determination about how long it had been there?

2 A You can see it almost looks like a -- not

3 slide mark but it appears the snow is disturbed underneath

4 the handgun whereas the snow is not on top.

11:58AM 5 Q And what was your conclusion based on that

6 paired with your observations leading up to finding that gun?

7 **MS. ZOGHLIN:** Objection.

8 **MAGISTRATE JUDGE FELDMAN:** Sustained.

9 Q What was your conclusion about how that gun

11:58AM 10 had gotten there?

11 **MS. ZOGHLIN:** Objection.

12 **MAGISTRATE JUDGE FELDMAN:** Isn't this asked and

13 answered? I mean, haven't we been over this.

14 **MS. HARTFORD:** That's fine, your Honor. I can move

11:59AM 15 on.

16 **MAGISTRATE JUDGE FELDMAN:** Okay.

17 Q You were asked on cross-examination about

18 commands that were given and I just want to clarify based on

19 how that question and answer went. Did you give commands

11:59AM 20 during the chase?

21 A Yes, I did.

22 Q Did the defendant immediately respond to your

23 commands during the chase?

24 A No, he did not.

11:59AM 25 **MS. HARTFORD:** That's all, thank you.

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11:59AM 1 **MAGISTRATE JUDGE FELDMAN:** Okay. Anything else?

2 **MS. ZOGHLIN:** No.

3 **MAGISTRATE JUDGE FELDMAN:** Thank you very much for

4 coming in.

11:59AM 5 **THE WITNESS:** Thank you, sir.

6 (WHEREUPON, the witness was excused)

7 **MAGISTRATE JUDGE FELDMAN:** All right. Does the

8 government rest?

9 **MS. HARTFORD:** Yes, your Honor.

11:59AM 10 **MAGISTRATE JUDGE FELDMAN:** Does the defense have

11 any proof?

12 **MS. ZOGHLIN:** One moment, Judge.

13 **MAGISTRATE JUDGE FELDMAN:** Okay.

14 (WHEREUPON, a discussion was held off the record.)

12:00PM 15 **MS. ZOGHLIN:** No, Judge, I have no witnesses.

16 **MAGISTRATE JUDGE FELDMAN:** Very well. Do you want

17 to maybe sum up to me what your argument here is. So I can

18 focus my report and recommendation on what you think the

19 issues are.

12:00PM 20 **MS. ZOGHLIN:** Could I take a little time to do that

21 Judge? I could send you just a letter that outlines that.

22 **MAGISTRATE JUDGE FELDMAN:** That would be great.

23 The only reason I'm kind of pressing because I'm running out

24 of time. I don't think the first day of hearing was ever

12:00PM 25 transcribed, is that correct?

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12:00PM 1 **MS. HARTFORD:** It was.

12:00PM 2 **MS. ZOGHLIN:** I got it.

12:01PM 3 **MAGISTRATE JUDGE FELDMAN:** Do you know if it was

4 filed. So the only thing that's left to be transcribed is

12:01PM 5 this?

6 **MS. ZOGHLIN:** Yes.

7 **MAGISTRATE JUDGE FELDMAN:** So I have about 80 days?

8 So if you get a transcript, say, by a week from today?

9 **MS. ZOGHLIN:** A week. I mean --

12:01PM 10 **MS. HARTFORD:** That's fine.

12:01PM 11 **MAGISTRATE JUDGE FELDMAN:** And a week to respond,

12 is that okay?

13 **MS. HARTFORD:** Yes, your Honor.

14 **MAGISTRATE JUDGE FELDMAN:** I don't think there's

12:01PM 15 anything overly complicated. I'm just kind of interested in

16 what you want me to focus on in terms of the issues. Thank

17 you.

18 (WHEREUPON, proceedings were adjourned.)

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12:01PM 3 **CERTIFICATE OF REPORTER**

12:01PM 4

12:01PM 5 In accordance with 28, U.S.C., 753(b), I

12:01PM 6 certify that these original notes are a true and correct

12:01PM 7 record of proceedings in the United States District Court

12:01PM 8 of the Western District of New York before the Honorable

12:01PM 9 Jonathan W. Feldman on August 5, 2019.

12:01PM 10

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12:01PM 12 S/ Diane S. Martens

12:01PM 13 Diane S. Martens, FCRR, RPR
Official Court Reporter

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